

## ANALYSIS OF AMENDED BILL

Author: AR&T Committee Analyst: Kimberly Pantoja Bill Number: AB 1635

Related Bills: AB 1636(1999/2000) Telephone: 845-4786 Amended Date: 06/03/99

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Filing Status of Individuals/Time For Filing Action

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED March 3, 1999 STILL APPLIES.

☒ OTHER - See comments below.

### SUMMARY OF BILL

This Franchise Tax Board (FTB) sponsored bill would:

1. allow the FTB to revise the California return to reflect the proper filing status (making the filing status different from the status on the federal return) when the filing status used on the California return is determined to be incorrect;
2. allow taxpayers who are not required to file a federal return to select any filing status for the California return that could have been claimed on the federal return had one been required;
3. allow taxpayers who file a joint return for federal purposes and are allowed to file either married filing separate returns or a joint return for California purposes to change their California filing status after the due date for filing the return has passed; and
4. provide that the 90-day period for filing an action regarding income taxes or interest begins on the date the Board of Equalization (BOE) determination becomes final.

### SUMMARY OF AMENDMENT

The June 3, 1999, amendment added the fourth provision above. This analysis will be limited to a discussion of this provision. The remainder of the department's analysis of the bill as introduced March 3, 1999, still applies.

### EFFECTIVE DATE

This bill would be effective January 1, 2000, and specifies that this provision applies to all BOE determinations which become final on or after this date.

Board Position:

<input checked="" type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input type="checkbox"/> PENDING

Department Director

Date

Gerald Goldberg

6/10/1999

### SPECIFIC FINDINGS

Current **state law** provides that a taxpayer, upon being denied a claim for refund by the FTB, may initiate legal action against the FTB for the recovery of the whole or part of the amount paid.

**State law** provides that the action must be filed within four years from the last date prescribed for filing the return or within one year from the date the tax was paid, or within 90 days after a notice of action by the FTB upon any claim for refund, or **final** notice of action by the BOE on an appeal from the FTB action on a claim for refund, whichever period expires later.

**State law** provides that a taxpayer may bring an action against the FTB for interest on the grounds set forth in the claim for the recovery of interest within the 90 days after an action by the FTB disallowing interest upon any claim for refund or, if a taxpayer appeals FTB's denial of interest to the BOE, within the 90 days after the mailing of the notice of determination by the BOE on the appeal.

**State law** provides that a determination by the BOE on an appeal of FTB's action on a claim for refund or a claim for interest is final upon the expiration of 30 days from the date of the determination unless within the 30-day period, the taxpayer or the FTB files a petition for rehearing with the BOE. In that event the determination becomes final upon the expiration of 30 days from the date the BOE issues its opinion on the petition.

In the recent published decision of FTB v. Kvamme (63 Cal. App. 4<sup>th</sup> 794; Cal. Rptr. 2d 889 [Apr. 1998]), the taxpayers argued that the law was unclear as to when the 90-day statute of limitations for filing a court action begins. The taxpayer maintained that the 90-day period for filing suit could be interpreted to begin when the BOE determination becomes final (30 days after the BOE notice is issued). Under this interpretation, the taxpayer would have 90 days plus an additional 30 days, for a total of 120, to file a court claim.

The California Court of Appeal concluded that the word "final" in Revenue and Taxation Code (R&TC) Section 19384 means the last action taken. Accordingly, the 90-day statute of limitations for filing a court claim is triggered by the BOE issuance (and mailing) of its original decision or opinion on the petition for rehearing of an administrative appeal, not 30 days later when the BOE action became "final" pursuant to R&TC Section 19334. Thus, the 30-day and 90-day time periods run concurrently.

**This bill** would provide that the 90-day period for filing an action begins on the date the BOE determination becomes final. Thus, the taxpayer would have 120 days to file an action.

### Policy Considerations

Where state law provides a specific period of time for taking an action, that period of time should be clearly defined so that both the government and the taxpayer understand when that period begins and expires.

This bill would change the conclusion reached by the First District Court of Appeal in the recent FTB v. Kvamme decision with respect to the statute of limitations for filing of a court action in specified circumstances, and instead provide that a taxpayer would have 90 days to file a court action from the date the BOE determination becomes final (as defined under the bill). This would benefit taxpayers by allowing 120 days to file a court action (30 days for the decision to become final and 90 days to file action once the determination is final).

#### Implementation Considerations

Implementing this provision would not significantly impact the department's programs and operations.

#### FISCAL IMPACT

##### Departmental Costs

This provision would not significantly impact the department's costs.

##### Tax Revenue Estimate

The specific data and information necessary to determine the impact of this provision are not available. Any revenue loss and forgone interest would depend on the extent to which a taxpayer prevails on a claim for refund that would have been otherwise dismissed under current law. To the extent additional claims are filed and taxpayers prevail, there would be a reduction in revenue.

According to departmental staff, it is estimated that approximately 50 cases on average (\$200,000) annually in court claims are dismissed due to the statute of limitations (90 days after notification). Assuming all these claims would be filed within 120 days and taxpayers would prevail in court proceedings, the revenue loss would be \$200,000 plus interest. It is also not known how many additional claims would be filed due to extending the statute for filing a court claim by 30 days. However, based on discussions with departmental staff, the total impact of this provision is estimated to be minor (less than \$500,000 annually).

#### BOARD POSITION

Support.

At its December 16, 1998, meeting, the Franchise Tax Board voted to sponsor the language contained in this provision.

